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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2019-0698; FRL-7826.1-3-OAR]

RIN 2060-AV31

Protection of Stratospheric Ozone: Listing of Substitutes under the Significant New Alternatives Policy Program; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal and partial withdrawal.

SUMMARY: On October 6, 2021, the U.S. Environmental Protection Agency issued a supplemental proposed rulemaking under the Significant New Alternatives Policy program to list certain substitutes to ozone-depleting substances in the foam blowing sector, extruded polystyrene: boardstock and billet end-use, as acceptable, subject to narrowed use limits, from the effective date of a subsequent final rule until January 1, 2023. This followed EPA's June 12, 2020, initial proposal which proposed to list three foam blowing agents, which are hydrofluorocarbon blends, as acceptable. Taking into consideration information available to EPA since issuance of that initial proposal, EPA proposed narrowed use limits and time-limited use of the substitutes in the supplemental proposal. Based on further information available to EPA, EPA is now withdrawing the proposed listings for the three foam blowing agents described in the initial and supplemental proposals. This document summarizes the proposed listings and provides an explanation for the Agency's decision not to finalize the proposed actions.

DATES: The U.S. EPA is withdrawing the proposed rule published on October 6, 2021 (86 FR 55549; FRL-7826.1-02-OAR); and is partially withdrawing the proposed rule published on June 12, 2020 (85 FR 35874; FRL-10009-66-OAR), by withdrawing the listings described in the table (“SUMMARY OF PROPOSED NEW LISTINGS FOR XPS FOAM BLOWING AGENTS”) published at 85 FR 35888-35889 on June 12, 2020, as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA-HQ-OAR-2019-0698. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on the EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division; telephone number 202-564-1230;

or email address: feather.john@epa.gov. You may also visit our website at <https://www.epa.gov/ozone-layer-protection> for further information.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” “the Agency,” or “our” is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

AIM Act	- American Innovation and Manufacturing Act
CAA	- Clean Air Act
CBI	- Confidential Business Information
CFR	- Code of Federal Regulations
CO ₂	- Carbon dioxide
EPA	- Environmental Protection Agency
FR	- <i>Federal Register</i>
GWP	- Global Warming Potential
HCFC	- Hydrochlorofluorocarbon
HCFO	- Hydrochlorofluoroolefin
HFC	- Hydrofluorocarbon
HFO	- Hydrofluoroolefin
NAICS	- North American Industrial Classification System
NPRM	- Notice of Proposed Rulemaking
ODS	- Ozone-depleting substances
SNAP	- Significant New Alternatives Policy
XPS	- Extruded Polystyrene: Boardstock and Billet

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I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of particular interest to regulated entities under the following North American Industrial Classification System (NAICS) codes:

- All Other Basic Organic Chemical Manufacturing (NAICS 325199)
- Polystyrene Foam Product Manufacturing (NAICS 326140)

B. Why is EPA issuing this withdrawal of the proposed actions?

This document serves the following purposes:

1. It announces to the public that EPA is withdrawing proposed listings under EPA's Significant New Alternatives Policy (SNAP) program for three foam blowing agents for which the Agency no longer intends to issue a final rule; and
2. It officially terminates the ongoing rulemaking activity, which allows the Agency to close out the individual rulemaking entry for these actions that appear in EPA's Semiannual Regulatory Agenda.

C. What is the Agency's authority for this action?

EPA's SNAP program implements section 612 of the Clean Air Act (CAA), including section 612(c) provisions concerning rulemakings that restrict replacing ozone-depleting substances (ODS) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available. Section 612(c) also requires EPA to publish lists of those substitutes which are unacceptable or acceptable for specific uses. Section 612(d) grants the right to any person to petition EPA to add a substance to,

or delete a substance from, the lists published in accordance with section 612(c). Section 612(e) also requires producers of substitutes for class I ODS to notify the Agency of introductions of these substances into interstate commerce for significant new uses, along with unpublished health and safety studies. The regulations for the SNAP program are promulgated at 40 CFR part 82, subpart G, and the Agency's process for reviewing SNAP submissions is described in regulations at 40 CFR 82.180. For additional information on the SNAP program, visit the SNAP portion of EPA's Ozone Layer Protection website at www.epa.gov/snap. Copies of the full lists of acceptable substitutes for ODS in all industrial sectors are available at www.epa.gov/snap/substitutes-sector. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the initial SNAP rulemaking published March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. SNAP decisions and the appropriate *Federal Register* citations are found at: www.epa.gov/snap/snap-regulations. Substitutes listed as unacceptable; acceptable, subject to narrowed use limits; or acceptable, subject to use conditions, are also listed in the appendices to 40 CFR part 82, subpart G.

II. Background

A. 2020 Notice of Proposed Rulemaking (NPRM)

As one component of the June 12, 2020, NPRM (85 FR 35874) (“2020 NPRM”),¹ EPA, as noted in a table titled “Summary of Proposed New Listings for XPS Foam Blowing Agents” on 85 FR 35888-35889, proposed to list three blends containing

¹ Other provisions of that proposal related to refrigeration and air conditioning and to fire suppression were finalized in a rule issued May 6, 2021 (86 FR 24444).

hydrofluorocarbon (HFC)-134a as acceptable foam blowing agents in extruded polystyrene: boardstock and billet (XPS): blends of 40 to 52 percent HFC-134a by weight and the remainder hydrofluoroolefin (HFO)-1234ze(E); blends of 40 to 52 percent HFC-134a with 40 to 60 percent HFO-1234ze(E) and 10 to 20 percent each water and carbon dioxide (CO₂) by weight; and blends with a maximum of 51 percent HFC-134a, 17 to 41 percent HFC-152a, up to 20 percent CO₂, and 1 to 13 percent water. EPA proposed to list those three specific blends of HFC-134a as acceptable in XPS, stating that “[t]hese blends have higher [global warming potentials] GWPs and are otherwise comparable or lower in risk than other alternatives listed as acceptable; however, EPA is taking this action because the Agency believes that other acceptable alternatives are not generally available for most needs under this end-use.” 85 FR 35888.

EPA also stated in the 2020 NPRM that, for substitutes to be “available” in the XPS end-use, they must be capable of blowing foam that meets the technical needs of XPS products including density and ability to meet testing requirements of building codes and standards, such as for thermal efficiency, compressive strength, and flame and smoke generation (85 FR 35888). Further, EPA noted that the company that initially submitted the three blends to the SNAP program for review indicated their difficulty meeting requirements for insulation value (“R-value”) with neat² acceptable blowing agents such as HFO-1234ze(E), HFC-152a, and CO₂.³ The submitter indicated that if in some cases it could meet R-value requirements with those neat blowing agents, these alternatives were not able to meet other requirements such as compressive strength, density and thickness,

² Individual, unblended blowing agents.

³ DuPont, 2019. December 17, 2019 Letter from DuPont Performance Building Solutions to EPA. Docket ID EPA-HQ-OAR-2019-0698-0008

or fire test results. The submitter also identified challenges with meeting code requirements for XPS products manufactured with flammable substitutes (e.g., HFC-152a, light saturated hydrocarbons C3-C6, and methyl formate) and provided examples of failed test results ⁴ (85 FR 35888).

EPA stated that it appeared that only one of the substitutes that the Agency believed would be available for use in XPS foam as of January 1, 2021 at the time of the final rule issued July 20, 2015 (80 FR 42870) (“2015 Rule”),⁵ was in fact available, and that it likely could only be used to meet the needs for some portion of the XPS foams market.⁶ Based on concerns about ensuring that the needs of the full XPS foams market in the United States could be met and not limiting the choice of acceptable substitutes to only one option, EPA proposed to list three additional blowing agent options for XPS that have been proven to work for this end-use.

B. 2021 Supplemental Proposal

EPA issued a supplemental proposal on October 6, 2021 (86 FR 55549), because of new information on the availability of substitutes which, among other things, included information on the introduction of a new substitute, blends of 10 to 99 percent by weight

⁴ DuPont, 2019. *Op. cit.*

⁵ The 2015 Rule, among other things, changed the listings for certain HFCs and blends from acceptable to unacceptable in various end-uses in the aerosols, refrigeration and air conditioning, and foam blowing sectors. After a challenge to the 2015 Rule, the United States Court of Appeals for the District of Columbia Circuit (“the court”) issued a partial vacatur of the 2015 Rule “to the extent it requires manufacturers to replace HFCs with a substitute substance” (see *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451, 462 (D.C. Cir. 2017)) and remanded the rule to the Agency for further proceedings. The court also upheld EPA’s listing changes as being reasonable and not “arbitrary and capricious.” See *Mexichem Fluor v. EPA*, 866 F.3d at 462–63.

⁶ In the 2020 NPRM, EPA further stated that the set of products that may be able to be manufactured with that substitute, HFC-152a, would account for a minority of the current market for XPS (85 FR 35888, footnote 54). As discussed further below, information available to the Agency since that proposal indicates that the statement that HFC-152a was being used alone was likely incorrect.

HFO-1336mzz(Z) and the remainder HFC-152a, which EPA listed as acceptable for use in XPS on December 11, 2020 (85 FR 79863). In the 2020 NPRM, EPA proposed to list the three HFC blends for use in XPS as acceptable. In the supplemental proposal, EPA took another approach by proposing to list these three HFC blends as acceptable, subject to narrowed use limits, from the effective date of any final rule to January 1, 2023.

C. Comments Received

EPA received comments on the initial and supplemental proposals from entities with various interests in foam blowing agents and foam insulation, including industry organizations for manufacturers of insulation other than XPS, chemical producers, manufacturers of XPS, manufacturers of other types of foam insulation, and environmental organizations. The two proposals addressed similar issues and similar issues were raised in public comment, with some updated information related to the supplemental proposal. The comments are briefly summarized below and are available in full in Docket EPA-HQ-OAR-2019-0698.

Multiple commenters requested that EPA withdraw the proposal and/or the supplemental proposal. Commenters raised concerns with the proposed listings, with some stating that there are other alternatives commercially available internationally with lower GWP for use in XPS boardstock. Commenters also provided information on the commercial availability in the United States of new XPS products using blowing agents with GWPs lower than 150 from all U.S. manufacturers of XPS. One major chemical producer added that their lower-GWP replacement foam blowing agent for HFC-134a used in the XPS end-use has been fully commercialized and has been manufactured in the United States since 2014. They stated that since then, this product has been adopted by a

number of key XPS foam manufacturers and provides customers significant GWP-reduction benefits in a market that will continue to value and require such benefits. A manufacturer of XPS stated that in Europe, a large manufacturer of XPS with CO₂ asserted that CO₂ as a blowing agent is clearly a viable technology with no supply barrier. A major chemical producer stated that HFO-1234ze(E) has been used commercially for many years and is used in the manufacture of XPS products by several firms in several countries around the globe where there are regulations requiring the use of safer blowing agents, including a large manufacturer of XPS in Europe. An environmental organization provided information on European products that contain CO₂ and various blends of either CO₂ or HFO-1234ze(E), including products from a European XPS manufacturer. Some commenters stated that all three U.S. manufacturers of XPS are now manufacturing products using lower-GWP blowing agents.

One commenter, a manufacturer of XPS, and the company that submitted the three blends to the SNAP program for review, had supported the initial proposal of listing the blends as acceptable, and in the supplemental proposal supported the option of listing the blends as acceptable, subject to narrowed use limits, for use in XPS until January 1, 2023. That company stated that suitable alternatives with sufficient performance parameters were not available, that these listings are necessary to bridge the transition to such alternatives, and that the near-term supply of alternatives was uncertain.

D. Additional Information that EPA Considered

After issuing the supplemental proposal, EPA listed three more substitutes with lower-GWP as acceptable for use in XPS (January 20, 2022; 87 FR 3037). The three substitutes are: blends of 10 to 90 percent HFO-1234ze(E) by weight and the remainder

hydrochlorofluoroolefin (HCFO)-1233zd(E); blends of 10 to 90 percent HFO-1234ze(E) by weight and the remainder HFC-152a; and blends of zero to 100 percent HFO-1234ze(E), zero to 70 percent methyl formate, zero to 60 percent HFC-152a, zero to 60 percent CO₂, and zero to 60 percent water. At least one of the three U.S. manufacturers of XPS is using one of these substitutes in manufacturing its products.

III. How does EPA intend to proceed?

Based on our consideration of these comments and the emergence of new listings of substitutes for this end-use, we believe lower risk alternatives are available and technically feasible. Accordingly, an acceptable listing, as proposed in the 2020 NPRM, is not appropriate, and a rulemaking effort for a limited duration, as proposed in the 2021 Supplemental Proposal, is not warranted. The information above demonstrates that alternatives are available and technically feasible that pose overall risk to human health and the environment comparable to or lower than that of other acceptable substitutes for use in XPS. The blends of HFC-134a described above remain unacceptable, as listed in appendix U to 40 CFR part 82 subpart G. This notice serves to provide transparency and clearly notify the public and those with particular interest of how we intend to proceed with respect to these listings.

For these reasons, EPA is withdrawing the proposed rule published on October 6, 2021 (86 FR 55549; FRL-7826.1-02-OAR), along with withdrawing the portions of the proposed rule published on June 12, 2020 (85 FR 35874; FRL-10009-66-OAR), that relate to listing as acceptable the three HFC blends for use in XPS.

IV. Impact Analysis

Because the EPA is not promulgating any regulatory requirements, there are no compliance costs or impacts associated with this action.

V. Statutory and Executive Order Reviews

This action does not establish new regulatory requirements. Hence, the requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (e.g., the Unfunded Mandate Reform Act) do not apply to this action.

Michael S. Regan,

Administrator.

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